Supreme Court, U.S.
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IN THE

Supreme Court of the United States

TAL TECHNOLOGIES, INC.,

Petitioner,

v.

THE CITY OF OKLAHOMA CITY,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Respondent is a municipality which condemned petitioner's land under a specific public use claim, but then, after taking the land, has planned to sell it to a private developer for private profit-making purposes and not the public use it adopted by council resolution or alleged to the trial court. The questions presented are:

1. Whether the taking by condemnation of private land under a false pretense of specific public use by a municipality, with the city then using that land for sale to a private developer who will profit therefrom with private businesses, violates the Fifth and Fourteenth Amendments to the U.S. Constitution concerning the taking of land for public use only.

2. Whether the taking by condemnation of private land by a municipality from a company which had plans, ability and could have developed that land and for transfer to a competing land developer (for developing with a plan similar to that of landowner) violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

3. Whether the taking by condemnation of private land by a municipality for development by a private developer, who will profit from restaurant and retail shops to be developed thereon, violates due process under the Fourteenth Amendment to the U.S. Constitution when the State Constitution forbids the taking of private land for private purposes absent the consent of the original owner, and absent express finding by the State courts that restaurants and retail shops are public uses under which the municipality is empowered to use eminent domain.

4. Whether the United States Constitution or the Oklahoma Constitution empower the municipality to condemn private property for the purpose of using that property for the

same kind of development as already designated to be developed by the landowner.

5. Whether the United States Constitution, the Oklahoma Constitution or applicable case law, *e.g.*, *City of Cincinnati v. Vester*, 281 U.S. 439 (1930), invalidate the taking by condemnation of private property where the condemned property is not needed for the claimed condemnation purposes, and this condemned 'excess' property is then scheduled for a profitable sale by the municipality to another private individual or entity.

PARTIES TO THE PROCEEDING

The following entities are parties to the proceeding in the court below:

Petitioner: **Tal Technologies, Inc.**, ("TTI") an Oklahoma corporation. Petitioner has no parent corporation and is not a publicly held company.

Respondent: **The City of Oklahoma City** ("City"), a municipal corporation.

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PETITION FOR WRIT OF CERTIORARI

The undersigned counsel, on behalf of Tal Technologies, Inc., respectfully petitions for issuance of a writ of certiorari to review the judgment of the Oklahoma Supreme Court in this case which denied review of an adverse decision of the Oklahoma Court of Civil Appeals.

The Oklahoma Court of Civil Appeals upheld an improper application of eminent domain power which is unsupported by Oklahoma law, and which directly violates the Petitioner's rights and protections as provided by the Fifth and the Fourteenth Amendments of the United States Constitution, Article 2 of the Oklahoma Constitution, as well as this Court's rulings in the case of the *City of Cincinnati v. Vester*, 281 U.S. 439 (1930), and in conflicts with other jurisdictions ruling including Oklahoma cases.

The trial court, as well as the Oklahoma Supreme Court and its Court of Civil Appeals completely ignored the constitutional and federal question issues, arguments, and propositions raised by Petitioner, and evaded any ruling on those issues, despite being sufficiently and properly raised in all courts below.

The lower court's decisions involve an issue of the utmost federal importance. The decisions below significantly weaken the protection of citizens' rights under the Fifth and the Fourteenth Amendments to the U.S. Constitution. While this Court has heard and ruled upon one of the issues raised here some 70 years ago (*i.e.*, the reselling of "excess" condemnation land for profit - *City of Cincinnati v. Vester*, *supra*), the remaining questions presented in this case, and the circumstances which are present here, have neither been addressed in reported case law nor resolved. However, this issue now needs this Court's attention because, in the past 10-15 years, the number of cases whereby a municipality

condemns property from one land developer for the purpose of giving that land to their "more favorable" developer are increasing in number. The last reported condemnation case of this Court occurred several years ago (*i.e.*, in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 239-41 (1984)), although the circumstances of that case were much different from those presented here and only addressed one of the issues raised here. Thus, this honorable court's review is urged, not only to clarify the constitutional rights of this Petitioner, but for the benefit of others with similar circumstances in other jurisdictions.

OPINIONS BELOW

The denial of the Oklahoma Supreme Court (reproduced in the Appendix to Tal Technologies' Petition for Writ of Certiorari in this case, Appendix [hereinafter "TTI App."], at 1, is unreported. The opinion of the Oklahoma Court of Civil Appeals (TTI App. at 2-10) is also unreported.

JURISDICTION

The judgment of the Oklahoma Supreme Court was entered on November 6, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

Petitioner expressly asserted below in its trial court 9/28/99 Motion to Reconsider, TTI App. at pp. 65-68, and 71-72, and on Appeal to the Oklahoma Supreme Court, *Brief in Chief* – TTI App., at pp. 83, 91, 94-99, and 110, that the City's condemnation was in violation of it's rights under the Fifth and Fourteenth Amendments to the United States Constitution. Also see TTI's 9/24/01 *Petition for Writ Of Certiorari* (filed in the Oklahoma Supreme Court), TTI App., at 134-136; TTI's 4/17/97 *Answer* (to initial condemnation Petition), TTI App. At 32. Despite the issues having been raised, the Oklahoma trial court and appellate courts failed to address the constitutional

questions. Yet the failure of the lower courts to address the denial of due process and constitutional protections does not present a barrier to this Court's review of those issues.

As this Court once noted, "[t]he issue of whether a federal question was sufficiently and properly raised in the state courts is itself ultimately a federal question, as to which this Court is not bound by the decision of the state courts." *Street v. New York*, 394 U.S. 576, 583 (1969); *See also Black v. Cutter Labs.*, 351 U.S. 292, 298 (1956) (this Court has a "duty to ... determine for ourselves precisely the grounds in which the judgment rests"). Accordingly, a state court cannot evade this Court's review by failing to discuss federal questions in its opinions. *Chapman v. Goodnow's Adm'r.*, 123 U.S. 540, 548 (1887) (If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all references to it, is as much against the right ... as if it has been specifically referred to and the right directly refused).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution, the relevant portion of which provides:

". . . . nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution, the relevant portion of which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

Section 23, of Article 2 of the Oklahoma Constitution which states:

"No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law."

STATEMENT OF THE CASE

The City of Oklahoma City (hereinafter "City") filed an action to condemn parcels of land owned by petitioner Tal Technologies, Inc. (hereinafter "TTI") under Oklahoma's eminent domain statutes. City's 3/25/97 *Petition to Select and summons Commissioner*, TTI App. at p. 24, and 1/29/97 City Council's *Resolution*, TTI App. At p. 30. TTI's parcels were located near, but not within, a City development project called "MAPS/Bricktown" in a section of downtown Oklahoma City. City used its limited statutory authority and money earmarked for certain defined development projects, claiming to the trial court that TTI's parcels were needed for public parking, public recreation and parks associated with the Bricktown project. The Petition gives no additional detail or plans beyond the extremely vague description. *See* City's *Petition*, TTI App., at p. 26; City Council *Resolution*, TTI App. At p. 29; and, City's *Motion to Overrule Defendant's Exceptions to Report of Commissioners*, TTI App., at pp. 38-40. TTI had already dedicated the parcels for public parking use, yet City still condemned the land. TTI's 4/17/97 Answer, TTI App. at p. 32; *Affidavit of Moshe Tal*, Record Document No. ("R.Doc. No.") R.Doc. No. 104, and development plans attached as Exhibits to said Affidavit, R.Doc. 104-305, and Exhibits "D" through "J" attached to TTI's 9/28/99 Motion to Reconsider, R.Doc. No. 389-437. TTI challenge the necessity of the taking (TTI's Answer, TTI App. at 32, Exception to Report, TTI APP, at. 34,

TTI's Response to City's Motion to Overrule Exceptions, TTI App. at 43-45, and TTI's Motion to Reconsider, at 65-74) which challenge was denied by the trial court. 8/28/97 Order Overruling Exceptions, TTI App. at 18-21, and 10/17/97 Orders Modifying Order Overruling Exceptions, TTI App. at 12-17.[1] After receiving an order granting possession from the trial court, the case awaited a trial on the value of the parcels.

After the transfer order, City then transferred ownership of the parcels to an urban renewal agency for sale to a private developer. It should be noted that the City never amended its condemnation Petition to reflect any "change of use", nor did the Oklahoma City Urban Renewal Authority join the suit as a party to the condemnation (for purposes of changing the condemnation to come within the State's Urban Renewal Act). In 1999, the private developer filed public plans to develop various tracts of land and use the TTI parcels for restaurants and other retail shops, *i.e.*, private for-profit development, not public parking. Exhibit "M and "N" to TTI's 9/28/99 Motion to Reconsider, R.Doc. No. 446-455.

Shortly after learning of the commitment to the private developer and the developer's plans, TTI renewed its challenge

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[1]. It should be noted that in the initial 8/28/97 Order, the Trial Court overruled TTI's Exceptions but restricted the City from reselling TTI's property - i.e., limited to leasing or renting it to a third party (government or private) for same or similar "public use". Ironically, that Order was prepared by the City's Assistant Municipal Counselor. The City Municipal Counselor then filed another Motion asking the Trial Court to Vacate or Modify the restrictions imposed in the initial Order - i.e., to allow the City to do whatever they pleased with the condemned property (claiming the City's Assistant Municipal Counselor made a mistake and exceeded his authority). TTI App. at 51-54.

under Oklahoma Supreme Court case law and complained that City misrepresented its true intentions to the trial court by actually taking the land with public powers for transfer to a private land developer. TTI's 9/28/99 Motion to Reconsider, TTI App. at pp. 56-75. TTI pled that the City's alleged reasons for the taking "were false and deceptive" and engaged in "fraudulent activities". TTI's 9/28/99 Motion to Reconsider – TTI App. at p. 64-71. TTI also pled that "[t]he taking of property for a private use under the guise of public use violates due process and is tantamount to legal fraud on property owners, even if there is no intent to deceive." (Citing *City of Arlington v. Golddust Twins Realty Corp.*, 41 F.3d 960 (5th Cir. 1994)). TTI's 9/28/99 Motion to Reconsider, TTI App. at pp. 71-72. City has never, in any of its pleadings in any court below, pled that it was taking TTI's land for private profiteering by a private developer or for any restaurant or retail shops, or that any such uses were under the ambit of 'public purpose' authorized for City's empowered condemnation. *See, e.g.*, City's initial condemnation *Petition* and City Council *Resolution* TTI App. at 23-31, and City's Motion to Overrule Exceptions ... TTI App. at 35-42.

The Oklahoma Constitution prohibits the taking of private property for private use absent the consent of the landowner. *Oklahoma Constitution, Article 2, Section 23.* TTI cited this provision and the U.S. Constitution (Amendments 5 and 14) to the trial court, along with the lack of equal protection and due process if the condemnation was permitted to stand in the face of the evidence. TTI's 9/28/99 Motion to Reconsider, TTI App. at 71-72, Also see, TTI's Answer, TTI App. at 31-32.

The trial court denied the renewed challenge. 12/6/99 Journal Entry... Denying ... Motion to Reconsider, TTI App. at 10-11.

The Oklahoma Court of Civil Appeals, also presented with TTI's analysis of unconstitutionality of the condemnation

decision, affirmed the denial of TTI's challenge based upon an entirely different rationale. 7/31/01 Oklahoma Court of Appeals Opinion, TTI App. at 2-10. The Court of Civil Appeals declared that TTI failed to adequately plead fraud under the State's statute for vacation of judgments. However, TTI had indeed pled fraud (*see* TTI's 9/28/99 motion to Reconsider, TTI App. at p. 64 [¶ 20], and pp. 68-71), plus no final judgment had been entered due to the pending valuation trial, thereby obviating the need for TTI to plead according to the State's post-judgment rules. Furthermore, TTI was acting under Oklahoma Supreme Court case law of *Gilliland v. Chronic Pain Associates*, 904 P.2d 73 (Okla. 1995), which permits a renewal of a challenge to the condemnation at any time until a monetary award is entered. Even though the Federal questions and constitutional rights issued (both Federal and State) were properly and adequately pled in the Petition In Error and TTI's Brief In Chief (TTI's Exhibit "C" to Petition in Error, TTI App. at 80, TTI's Brief, TTI App. at 91, 94-990, the Court of Civil Appeals did not address the constitutional issues raised. *See* 7/31/01 Oklahoma Court of Civil Appeals' Opinion, TTI App. at 2-10. TTI moved for reconsideration, citing the constitutional infirmities of the decision (TTI's *Petition for Rehearing*, TTI App. at. 112-125), which quest was denied. Oklahoma Court of Civil Appeals denial Order, TTI App. at p. 22.

TTI then raised the same issue in its petition for writ of certiorari to the Oklahoma Supreme Court. TTI's 9/24/01 *Petition for Writ of Certiorari* - TTI App. at pp. 124-137. A divided Oklahoma Supreme Court summarily denied certiorari (TTI App. at p. 1), despite also being presented with the constitutional issues raised.

REASONS FOR GRANTING CERTIORARI

A. City's Condemnation Powers Are Limited

City's condemnation powers are limited to certain defined purposes under State law. *11 Okla. Stat. § 22-104.* Absent from the permitted purposes is the right to condemn under eminent domain for development of retail or private profit-making ventures. Powers upon which municipalities base their eminent domain actions are to be strictly followed. *City of Cincinnati v. Vester,* 281 U.S. at 448 (1930)(upholding Ohio statutory doctrine); *Public Service Co. of Oklahoma v. B. Willis, C.P.A., Inc.,* 941 P.2d 995 (Okla. 1997)(applying strict construction law to Oklahoma condemnation statutes).

City's apparent intent was to use its eminent domain powers under the guise of condemning TTI's parcels allegedly for public parking needs associated with metropolitan development projects. After obtaining the parcels during the condemnation proceeding, and while the matter is still pending in the courts, City acted to transfer the parcels to a private developer who has filed public plans to develop and use these very parcels for restaurants and private retail businesses at an immense profit to the developer (and to the City). City has no statutory power to condemn the parcels under eminent domain for the purposes for which City now plans for the parcels.

As stated above, City claimed that TTI's property was needed for "public park, parking, recreational and MAPS facilities", City's Petition, TTI App., at p. 26, and City's *Motion to Overrule Defendant's Exceptions to Report of Commissioners*, TTI App., at pp. 38-40, but as proven by documents discovered about two years after the initiation of the condemnation proceeding (while the case was still pending adjudication), the development plans and use of TTI's parcels is not for the falsely claimed public park, parking, recreational or any of the nine published public MAPS projects, but rather for restaurants and other retail shops,

i.e., private for-profit development (to be developed by TTI's competitor). See, TTI's 9/28/99 Motion to Reconsider, TTI App. at p. 63, and Exhibit "M and "N" attached to said motion, R.Doc. No. 446-455. Clearly, the taking of TTI's property has little or no relationship to the public purpose that the City claimed it needed TTI's property for, and such clear evidence, false within the established "unconstitutional conditions" doctrine. In *Dolan v. City of Tigard*,512 U.S.374, 385 (1994), this Court stated:

> Under the well settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit.

Even assuming, *arguendo*, that the City properly pled that it intended to condemn TTI property for private development ---- *i.e.*, restaurants, shops and supportive parking ---- because the Petitioner had already designated its land for public parking and retail shops/restaurants, and submitted its plan to the City **prior** to the condemnation proceeding, eminent domain laws and the constitution prohibits the City from condemning property for the same of similar use as designated by the landowner. *City of Pryor Creek v. Public Service Co.*, 536 P.2d 343 (Okla 1975). Thus, even if the City did not make any false or deceptive claims as to the reasons for condemning TTI property, and assuming, *arguendo*, that no fraud was committed, Oklahoma Case law, as well as, the Oklahoma and the United States Constitution DOES NOT grant the City the power to condemn property for the same use as already designated by the landowner. In *City of Pryor Creek v. Public Service Co.*, 536 P.2d at 346, the Oklahoma Supreme Court held: "The general rule is that property already legally appropriated to a public use is not to be afterwards taken by a municipality for a like use unless the intention of the Legislature that it should be so taken has been manifested in express terms or by

necessary implication.. . . . To hold otherwise would amount simply to taking property from one and destroying his right to operate although expressly authorized to do so, and giving it to another without any benefit to the public." (Internal citations omitted).

B. Trial Court (affirmed by the Oklahoma Court of Civil Appeals) Improperly Relied on City Council Resolution as a "Legal" Means as to Proving "Necessity of Taking"

In its pleadings, the City submitted the City Council Resolution as a legal justification in support of proving the "Necessity of Taking" issue. City's 1/29/97 City Council *Resolution* attached as Exhibit "A" to City's initial condemnation *Petition*. TTI App. at pp. 28-31. It is well established that a City Charter or a City Council Resolution DOES NOT "override" the legislation's intent and/or the restriction imposed upon the municipalities pursuant to the eminent domain laws. "Power of eminent domain is of state-wide interest and importance. This right cannot be extended and expanded by provisions of the city charter." *City of Pryor Creek v. Public Service Co.*, 536 P.2d at 346.

C. City's Condemnation Violates Oklahoma's and United States' Constitutions

City's condemnation was not only beyond its statutory powers, but it violates both the State of Oklahoma and the United States Constitutions.

City cannot use eminent domain under Oklahoma's constitution where it takes private land for private use. *Oklahoma Constitution, Article 2, Section 23.* The federal constitution also requires a public use for condemnation. *U.S. Constitution, Fifth and Fourteenth Amendments; Palazzolo v. Rhode Island,* 533 U.S. 606, ___, 121 S. Ct. 2448, 2457 (2001);

Hawaii Housing Authority v. Midkiff, 467 U.S. at 239-41.

There was no finding in the courts below that private restaurants or retail shops qualify as 'public uses' because City misrepresented its reasons for condemnation. Its argument opposing TTI's exceptions clearly reflect that City argued only for parking and parks, not retail stores or profit-making ventures to benefit a private developer. At least one circuit has decided that taking property for private use under the guise of public use violates due process and is fraud upon the condemnee. *City of Arlington v. Golddust Twins Realty Corp., supra*. This Court has long required a justifying public purpose, see *Hawaii Housing Authority v. Midkiff*, 467 U.S. at 241 and cases cited therein, which was never litigated at bar because of City's misrepresentation to the trial court.

D. Eminent Domain Laws and This Court's Ruling in *City of Cincinnati v. Vester, supra*, Forbids Municipality from Condemning Property for the Purpose of Reselling it to a Private Party and Profiting From Selling "Excess Condemnation"

In the case at bar, TTI purchased in 1989 approximately 5 acres in downtown Oklahoma City on the south side of an entertainment district area known as "Bricktown". On December 14, 1993, the citizens of Oklahoma City approved a 1 cent - 5 year limited sales tax increase to raise approximately $350 million dollars to be strictly used for several public projects (known as the "MAPS" projects). 2 of these public MAPS projects were planned to be located in the Bricktown area. A triple A 16,000 seat baseball stadium, and a man-made canal designed to flow through Bricktown and down toward the Canadian River. Approximately 60,000 square feet of TTI's property (approx. 1.4 acres) are located adjacent to the MAPS Canal and directly south of the Ballpark. The MAPS Master-Plan did not include any plan to use TTI's property for any public use, and in fact, the City's parking lots plans were designed to

be located adjacent and west of TTI's property.

From about mid 1994 through early 1997, TTI through an affiliated company, Bricktown 2000 Inc., designed and submitted to the City its plan to develop the TTI's property to include public parking, as well as, retail shops and restaurants. 8/28/97 *Affidavit of Moshe Tal* and development plans Exhibits thereto - R.Doc. 103-305. During the second half of 1996, a competing developer, who had a business relationship with the City for developing City's property east of TTI's property, approached the City and asked the City to "swap" land, and move his previous development plan closer to the Ballpark and Bricktown (prime location). A few months later, in March 1997 (at the same time that the canal construction begun), the City initiated the condemnation proceeding on TTI's 1.4 acres that is located adjacent and on the south side of the canal. In its Petition, the City claimed it needed TTI's property for parking, public recreation and parks associated with the MAPS canal and Ballpark. However, as mentioned above and in the pleadings filed by TTI with the courts' below, the City's MAPS Plan did not include TTI's property. TTI's Motion to Reconsider, TTI App. at p.84-85, and Exhibits "A" and "B" to said Motion, R.Doc at pp. 372-388.

TTI timely and properly filed its objections to the taking and challenged the legality and necessity of taking. 6/30/97 *Exception to Report* (of Commissioners), TTI App. at pp. 33-34. In the courts below, TTI also claimed that in addition to the lack of necessity of public use, the City condemned TTI's property for a ridicules amount which is substantially below the market value (City condemned TTI's parcels at a rate of 89¢ per square foot when the private market for properties along the canal has been selling for much higher prices, as high as $100 per square foot). However, TTI also alleged that the City contracted to sell the TTI condemned property to a private developer (and not for the use they claimed in its petition - i.e., public facilities), for the sum of $2.75 per square foot. Thus, the City here stands to

make approximately 230% profit from selling TTI's "excess condemnation" property (as it is now obvious that the City does not need TTI's property for the canal or related public parks, parking or public recreation). TTI's 8/18/00 *Brief in Chief*, TTI App. at p. 100, TTI's 9/24/01 *Petition for Writ of Certiorari*, TTI App. at p. 135.

Despite making and presenting evidence in support of these allegations in the court below (see TTI's 9/28/99 *Motion to Reconsider*, TTI App. pp. 56-79, numerous Exhibits thereto, R.Doc. No. 369-455; TTI's *Brief In Chief*, TTI App. at pp. 81-111; TTI's *Petition for Writ of Certiorari*, TTI App. at pp.126-137, TTI properly challenged the validity of the City's reselling the property for profit, as well as, asking for injunction - TTI's *Motion to Reconsider*, TTI App. at p.74-75), the courts below ignored the issue and affirmed the "legality" of the taking. This court specifically expressed its opinion, in the case of the *City of Cincinnati v. Vester*, *supra*, that the selling by the city of "excess condemnation" at a profit invalidates the taking and wherein this court also stated:

> We understand it to be the rule in Ohio, as elsewhere, that the power conferred upon a municipal corporation to take private property for public use must be strictly followed.

Citations omitted. *Id.*, 281 US. at 448.

E. Courts Below Avoided Ruling on TTI's Federal Questions which Were Sufficiently and Properly Raised and Which Rulings Were Detrimental and Necessary to Determine the Case

TTI squarely presented these arguments to the courts below, but received no direct ruling at the appellate level nor at the trial court level. Thus, the Federal right has been set up and implicitly denied in the state courts, satisfying the requirements

for Federal review. *See Louisville & Nashville Railroad Company v. Woodford*, 234 U.S. 46, 51 (1914). *See also Street v. New York*, 394 U.S. at 583; *Black v. Cutter Labs.*, 351 U.S. at 298; and *Chapman v. Goodnow's Adm'r.*, 123 U.S. at 548.

F. Abuse of Eminent Domain Power Is Not Limited to This Case, or to Oklahoma, but Within an Increasing Number of Other Jurisdictions

Granting writ of certiorari for this case would clarify not only this Petitioner's constitutional rights of due process and equal protection, but would also resolve numerous pending litigations all over the United States.

A number of national organizations are "fighting city hall" in cases involved allegations of unconstitutional taking of private property (Institute for Justice - www2.ij.org; American Land Rights Association [with approximately 15,000 landowners/members] - www.landrights.org; and Kansas City Freedom group - www.freedom.simplenet.com., to name just a few such organizations).

The Institute for Justice (Washington, D.C.) is only one non-profit entity assisting private landowners in protecting their properties and constitutional rights in numerous eminent domain litigations nationwide where municipalities condemned land from one private property owner for the benefits of another private entity under the "pretense" of "public use".

The following are but a sampling of a few of the similar condemnation cases: (1) in Port Chester, New York, the city condemned numerous private businesses and intended to transfer these properties to a more "favorable" developer; (2) the town of Merriam, Kansas, condemned a private property utilized for sales of used cars for the purpose of giving it to a BMW car dealer; (3) the City of Atlantic City condemned a private home with the intent to transfer it to Trump Casino for

use as a parking lot for their clients' limousines.

Likewise, numerous condemnation cases have "grabbed" the attention of the national media (including the New York Times). However, the fast growing problems of abuse of condemnation power is best described in a June 24, 2000, WorldNetDaily.com Internet news article (by Patrick Poole) titled: *Sell Your Land or We'll Take It - Use of Eminent Domain 'Completely Out of Control'*, where it was written:

> Private developers and local governments, using the power of eminent domain, are increasingly joining together to force property owners from their land, coercing the transfer of property from one private owner to another.

Petitioner here has spent almost five years "fighting" the City of Oklahoma City for what it strongly believes to be an abuse of power and severe breach of constitutional rights, not to mention the thousands of dollars in legal cost and a numerous amount of man-hours (which does not include any business profit loss). However, this Court should also take into consideration the large number of citizens who do not have the financial means, the time, or the energy to "fight city-hall".

The difficulties with enforcing and applying the Takings Clause of the Fifth Amendment was recognized by this Court's Chief Justice William Rehnquist in reviewing the *Dolan v. City of Tigard* case where he wrote for this Court:

> We see no reason why the Takings Clause of the Fifth Amendment, as much as part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

Id., *Dolan v. City of Tigard*, 512 U.S. at 392.

CONCLUSION

The petition for a writ of certiorari should be granted and the case considered in light of the decisions of the Oklahoma courts which have denied Petitioner its constitutional rights of due process and equal protection.

Respectfully submitted.

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FEBRUARY 1, 2002